IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2291 OF 2004

Hirofumi Nishio and anr. ... Petitioners

versus

State of Maharashtra and anr. ... Respondents

...

Mr. Amit Desai i/by Udwadia & Udeshi, for the Petitioners.

Mr. K.V. Saste, A.P.P., for Respondent No. 1.

Mr. P.D. Desai, for Respondent No. 2.

...

CORAM : A.M.KHANWILKAR,J.

22nd December 2004

P.C.:

. Heard Counsel for the parties. This writ petition takes exception to the order passed by the Metropolitan Magistrate, 14th Court, Girgaum, Mumbai, dated October 5, 2004 in Complaint No. 4/S/2000, wherein the Petitioners have been named as accused. The learned Magistrate has issued non-bailable warrants against the present Petitioners, who are accused Nos. 6 and 8

respectively, for the reasons recorded in the order, more particularly in para 3 of the order. Going by the reasons as recorded, I see no difficulty in upholding the order as passed by the Magistrate. When this petition was circulated for admission, the Petitioners were informed through their Counsel that in the peculiar fact situation of the present case, the appropriate course for them would be to submit to the jurisdiction of the Court and if they were willing to do so, all other grievances made by them in this petition or to be made by way of discharge application can be proceeded with in accordance with law. Sufficient time has been given to the Petitioners to consider that suggestion. But, even today, they have not chosen to appear either before this Court or before the trial Court. It cannot be disputed that exempting personal appearance of the accused is a matter of discretion of the trial Court. Indeed, the discretion has to be exercised judiciously. In the present case, it is seen that the process was issued as back as in February 2003, which was duly served on the Petitioners on 28th February 2003. Consequent thereto, the Petitioners entered appearance

before the trial Court through their Counsel on 10th March 2003. Since then, at least on more than 40 occasions, the Court has dispensed with the personal presence of the Petitioners. The record indicates that the Petitioners, without giving prior intimation to the trial Court, much less taking prior permission of the trial Court, left the jurisdiction of the trial Court and have proceeded abroad. In this backdrop, if the Magistrate has insisted upon appearance of the Petitioners to reassure himself that the Petitioners are available for the trial, no fault can be found with the decision as passed. The present petition has been presented through the Constituted Attorney of Petitioner No. 2, Mr. P.K. Mukherjee. Without going into the issue as to whether such writ petition can be presented, in my opinion, the only limited indulgence that can be shown to the Petitioners is to keep the order passed by the Metropolitan Magistrate issuing non-bailable warrants in abeyance for a period of one month from today, within which time the Petitioners may make appearance before the Magistrate and seek further directions as may be warranted. Needless to observe that if the Petitioners make appearance before the Magistrate

and submit to the jurisdiction of that Court, the Magistrate will consider their application for exemption from personal appearance, including their prayer for permitting them to return abroad in accordance with law. This petition is being disposed of only on this limited basis. It is made clear that if the Petitioners appear before the Magistrate within the specified period, the Magistrate may proceed to consider their request of recall of the order and for exempting them from further appearance, as may be warranted in the case.

. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)